

MT LEGISLATIVE HISTORY

Chapter 476 1989

Bill (H) 425 S _____

Original bill & hist. ✓ C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Feb 07 ✓ C

Hearing Date(s) Mar 16 ✓ C

Feb 09 ✓ C

Mar 20 ✓ C

_____ C

_____ C

_____ C

_____ C

Date Out Feb 09 ✓ C

Mar 20 ✓ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

HOUSE FINAL STATUS

3/23 SIGNED BY SPEAKER
3/27 SIGNED BY PRESIDENT
3/28 TRANSMITTED TO GOVERNOR
3/29 SIGNED BY GOVERNOR
CHAPTER NUMBER 363 EFFECTIVE DATE: 3/29/89

HB 425 INTRODUCED BY VINCENT, ET AL.
PROVIDE STRICTER DUI PENALTIES

1/25 INTRODUCED
1/26 REFERRED TO JUDICIARY
2/07 HEARING
2/13 COMMITTEE REPORT--BILL PASSED AS AMENDED
2/15 2ND READING PASSED AS AMENDED 87 11
2/17 3RD READING PASSED 87 8

TRANSMITTED TO SENATE
2/18 REFERRED TO JUDICIARY
3/16 HEARING
3/20 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
3/22 2ND READING CONCURRED 28 13
3/27 3RD READING CONCURRED 29 20

RETURNED TO HOUSE WITH AMENDMENTS
3/30 2ND READING AMENDMENTS CONCURRED 97 1
3/31 3RD READING AMENDMENTS CONCURRED 94 3

4/05 SIGNED BY SPEAKER
4/06 SIGNED BY PRESIDENT
4/06 TRANSMITTED TO GOVERNOR
4/08 SIGNED BY GOVERNOR
CHAPTER NUMBER 476 EFFECTIVE DATE: 10/01/89

HB 426 INTRODUCED BY WALLIN, ET AL.
MAKE PERMANENT THE AVICULTURAL PERMIT SYSTEM FOR
TAKING MIGRATORY GAME BIRDS

1/25 INTRODUCED
1/26 REFERRED TO FISH & GAME
1/26 FISCAL NOTE REQUESTED
1/31 FISCAL NOTE RECEIVED
2/03 FISCAL NOTE PRINTED
2/09 HEARING
2/10 COMMITTEE REPORT--BILL PASSED
2/13 2ND READING PASSED 96 0
2/15 3RD READING PASSED 96 0

TRANSMITTED TO SENATE
2/16 REFERRED TO FISH & GAME
3/07 HEARING
3/08 COMMITTEE REPORT--BILL CONCURRED
3/09 2ND READING CONCURRED 49 0
3/11 3RD READING CONCURRED 43 1

RETURNED TO HOUSE
3/17 SIGNED BY SPEAKER
3/18 SIGNED BY PRESIDENT
3/18 TRANSMITTED TO GOVERNOR
3/22 SIGNED BY GOVERNOR
CHAPTER NUMBER 227 EFFECTIVE DATE: 3/22/89

HOUSE BILL NO. 425

INTRODUCED BY VINCENT, BROOKE, CLARK, SPAETH

IN THE HOUSE

JANUARY 25, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 26, 1989	FIRST READING.
FEBRUARY 13, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 14, 1989	PRINTING REPORT.
FEBRUARY 15, 1989	SECOND READING, DO PASS AS AMENDED.
FEBRUARY 16, 1989	ENGROSSING REPORT.
FEBRUARY 17, 1989	THIRD READING, PASSED. AYES, 87; NOES, 8.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 18, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 20, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 21, 1989	SECOND READING, PASS CONSIDERATION.
MARCH 22, 1989	SECOND READING, CONCURRED IN.
MARCH 27, 1989	THIRD READING, CONCURRED IN. AYES, 29; NOES, 20.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 30, 1989

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 31, 1989

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 ~~HOUSE~~ BILL NO. 425
2 INTRODUCED BY Vigant Bruce Clark Smith
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO MODIFY THE DRIVING
5 UNDER THE INFLUENCE AND PER SE PENALTY STATUTES RELATING TO
6 ALCOHOL- OR DRUG-RELATED DRIVING OFFENSES; TO KEEP A
7 SUSPENSION IN EFFECT UNTIL TREATMENT IS COMPLETED; TO
8 PROVIDE THAT, FOR THE PURPOSE OF CALCULATING THE NUMBER OF
9 CONVICTIONS, A CONVICTION UNDER ONE OFFENSE CONSTITUTES A
10 CONVICTION UNDER THE OTHER AND TO PROVIDE THAT, EXCEPT FOR
11 THE FIRST OFFENSE, THE PENALTIES IN THE TWO STATUTES ARE THE
12 SAME; TO CLARIFY WHEN AN OFFENDER IS CONSIDERED TO HAVE A
13 PREVIOUS CONVICTION; TO DELETE A REQUIREMENT THAT RECORDS BE
14 EXPUNGED; AND AMENDING SECTIONS 61-5-208, 61-8-714, AND
15 61-8-722, MCA."
16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
18 **Section 1.** Section 61-5-208, MCA, is amended to read:
19 "61-5-208. Period of suspension or revocation. (1) The
20 department may not suspend or revoke a driver's license,
21 commercial vehicle operator's endorsement, or privilege to
22 drive a motor vehicle on the public highways for a period of
23 more than 1 year, except as permitted under subsection (2)
24 of this section, 61-5-207, 61-5-212, 61-6-123, and
25 61-11-211.

1 (2) Any person whose license, commercial vehicle
2 operator's endorsement, or privilege to drive a motor
3 vehicle on the public highways has been suspended or revoked
4 is not entitled to have such the license, endorsement, or
5 privilege renewed or restored unless the revocation was for
6 a cause which has been removed, except that after the
7 expiration of the period of such the revocation or
8 suspension, the person may make application for a new
9 license or endorsement as provided by law but the department
10 may not then issue a new license or endorsement unless and
11 until it is satisfied, after investigation of the driving
12 ability of the person and upon a showing by its records or
13 other sufficient evidence, that the person is eligible to be
14 licensed to drive in this state. When any person is
15 convicted or forfeits bail or collateral not vacated for the
16 offense of operating or being in actual physical control of
17 a motor vehicle while under the influence of alcohol or any
18 drug or a combination thereof or for the offense of
19 operation of a motor vehicle by a person with alcohol
20 concentration of 0.10 or more, the department shall, upon
21 receiving a report of such conviction or forfeiture of bail
22 or collateral not vacated, suspend the license, including
23 any commercial vehicle operator's endorsement, or driving
24 privilege of the person for a period of 6 months, except
25 that if the person is required to complete a treatment

course or program, the suspension remains in effect until the course or program is completed. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall revoke the license, ~~including--any~~ commercial vehicle operator's endorsement, or driving privilege of the person for a period of 1 year, except that if the person is required to complete a treatment course or program, the revocation remains in effect until the course or program is completed.

(3) The period for all revocations made mandatory by 61-5-205 shall be 1 year except as provided in subsection (2) of this section.

(4) The period of revocation for any person convicted of any offense which makes mandatory the revocation of the driver's license commences from date of conviction or forfeiture of bail."

Section 2. Section 61-8-714, MCA, is amended to read:

"61-8-714. Penalty for driving under the influence of alcohol or drugs. (1) A person convicted of a violation of 61-8-401 shall be punished by imprisonment in the county jail for not less than 24 consecutive hours or more than 60 days, and shall be punished by a fine of not less than \$100 or more than \$500. The jail sentence may not be suspended unless the judge finds that the imposition of the jail

sentence will pose a risk to the defendant's physical or mental well-being.

(2) On a second conviction, he shall be punished by a fine of not less than \$300 or more than \$500 and by imprisonment for not less than 7 days, at least 48 hours of which must be served consecutively, or more than 6 months. Three days of the jail sentence may not be suspended unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being.

(3) On the third or subsequent conviction, he shall be punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served consecutively, or more than 1 year, ~~to which may be added, in the discretion of the court, and by~~ a fine of not less than \$500 or more than \$1,000. Notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the jail sentence imposed for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.

(4) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of

institutions, which may include alcohol or drug treatment, or both, if considered necessary by the counselor conducting the program. Each counselor providing such education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

(5) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state, or conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of this section if less than 5 years have elapsed between the commission of the present offense and a previous conviction. ~~If--there--has--been--no--additional conviction-for-an-offense-under-this-section-for-a-period-of 5-years-after-a-prior-conviction-hereunder, then such prior offense shall be expunged from the defendant's record.~~

(6) For the purpose of calculating subsequent convictions under this section, a conviction for a violation of 61-8-406 also constitutes a conviction for a violation of

61-8-401."

Section 3. Section 61-8-722, MCA, is amended to read:

"61-8-722. Penalty for driving with excessive blood alcohol concentration. (1) A person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than \$100 or more than \$500.

(2) On a second conviction ~~of a violation of 61-8-406,~~ he shall be punished by a fine of not less than \$300 or more than \$500 and by imprisonment for not less than 7 days, at least 48 consecutive hours of which must be served consecutively, or more than 30 days and by a fine of not less than \$300 or more than \$500 6 months. Three days of the jail sentence may not be suspended unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being.

(3) On a third or subsequent conviction ~~of a violation of 61-8-406,~~ he shall be punished by imprisonment for a term of not less than 30 days, at least 48 consecutive hours or more than 6 months of which must be served consecutively, or more than 1 year, and by a fine of not less than \$500 or more than \$1,000. Notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the jail sentence imposed for a

1 third or subsequent offense that occurred within 5 years of
 2 the first offense may not be deferred or suspended.

3 (4) The provisions of 61-5-205(2), 61-5-208(2), and
 4 61-11-203(2)(d), relating to revocation and suspension of
 5 driver's licenses, shall apply to any conviction under
 6 61-8-406.

7 (5) In addition to the punishment provided in this
 8 section, regardless of disposition, the defendant shall
 9 complete an alcohol information course at an alcohol
 10 treatment program approved by the department of
 11 institutions, which may include alcohol or drug treatment,
 12 or both, if considered necessary by the counselor conducting
 13 the program. Each counselor providing such education or
 14 treatment shall, at the commencement of the education or
 15 treatment, notify the court that the defendant has been
 16 enrolled in a course or treatment program. If the defendant
 17 fails to attend the course or the treatment program, the
 18 counselor shall notify the court of the failure.

19 (6) For the purpose of determining the number of
 20 convictions under this section, "conviction" means a final
 21 conviction, as defined in 45-2-101, in this state, or
 22 conviction for a violation of a similar statute in another
 23 state, or a forfeiture of bail or collateral deposited to
 24 secure the defendant's appearance in court in this state or
 25 another state, which forfeiture has not been vacated. An

1 offender is considered to have been previously convicted for
 2 the purposes of this section if less than 5 years have
 3 elapsed between the commission of the present offense and a
 4 previous conviction. ~~If--there--has--been--no--additional~~
 5 ~~conviction-for-an-offense-under-this-section-for-a-period-of~~
 6 ~~5-years-after-a-prior-conviction-hereunder,-then-such--prior~~
 7 ~~offense-shall-be-expunged-from-the-defendant's-record-~~

8 (7) For the purpose of calculating subsequent
 9 convictions under this section, a conviction for a violation
 10 of 61-8-401 also constitutes a conviction of 61-8-406."

11 NEW SECTION. Section 4. Extension of authority. Any
 12 existing authority to make rules on the subject of the
 13 provisions of [this act] is extended to the provisions of
 14 [this act].

-End-

STATUS SHEET

51 LEGISLATIVE SESSION

JUDICIARY

COMMITTEE

BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
HB 414	1-26	2-7	<TABLED ON 2-13>								
HB 422	1-26	2-10	2-15			2-15					
HB 425	1-26	2-7	2-9			2-9					
HB 443	1-27	2-8	2-8	2-8							
HB 445	1-27	2-7	<TABLED ON 2-9>								
HB 454	1-27	1-31	1-31	1-31							
HB 459	1-27	2-9	2-9			2-9					
HB 450	1-27	2-8	2-10			2-10					
HB 470	1-30	2-8	2-8	2-8							
HB 473	1-30	2-14	<TABLED ON 2-15>								
HB 480	1-30	2-10	2-10			2-10					
HB 489	1-30	2-10	2-10	2-10							
HB 491	1-30	2-10	2-10			2-10					
HB 492	1-30	2-10	2-10	2-10							

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on February 7, 1989, at
8:05 a.m.

ROLL CALL

Members Present: All members were present.

Members Excused: None.

Members Absent: None.

Staff Present: Julie Emge, Secretary
John MacMaster, Legislative Council

HEARING ON HOUSE BILL 425

Presentation and Opening Statement by Sponsor:

Rep. Vincent stated that he feels strongly about this bill because the consequences for innocent victims and for drunk driver's themselves are so dire. In the final analysis we are not just talking about a problem, we are talking about people dying. We ought to do everything and anything we can to diminish to mitigate the impact of drunk driver's on society in Montana. That includes helping them in regard to the damage they do to themselves.

Rep. Vincent listed statistics on drunk driving:

1. On any Friday or Saturday night one out of ten drivers on the road is legally drunk. In Montana it is actually more, and it varies from time to time.
2. For every 2,000 drunk drivers, only one is arrested. That means that most of the people that drive by you are drunk.
3. The leading single cause of death for ages 15-40 is drunk driving.
4. The percentage of traffic deaths blamed on drunk driving is in 1986 - 48%, 1987 - 55% and in 1988 - 58%. That is a 10% increase over three years.
5. Drunk driving in 1980 - 1987 in 15 - 40 age group there have been 30,000 accidents, 18,000 injuries and 1,000 deaths. To put 1,000 deaths in perspective, it is the population of Three Forks.

Rep. Vincent stated that harsh penalties are a very important component in a DUI situation, but they are not the entire answer. HB 425 addresses three steps:

1. Deterrence: make sure that any penalties you put on the books are effective to deter in the first place. Once the accident has occurred, it is too late.
2. Punishment: the sound of the jail door tightening behind someone so they know that this society does not approve of people driving drunk.
3. Help: getting people into the system and begin to help with what many have as a serious problem.

Rep. Vincent stated that HB 425 does four things:

1. HB 425 keeps a license suspension in effect until treatment is completed. This is to emphasize the help aspect, not the punishment aspect.
2. The bill makes sure that a second offender always is punished by a greater fine and a greater jail sentence than a first offender. If you want to get someone into the system you need to let them know that if you do this again, you are in fact going to pay a more severe penalty than you did the first time.
3. HB 425 clarifies when a defender is considered to have a previous conviction. That makes the statute consistent.
4. HB 425 strikes language that allows a previous conviction to be stricken from their record.

Testifying Proponents and Who They Represent:

Wally Jewell, Montana Magistrates Association

Mike Ruppert, Executive Director of Boyd Andrew Chemical Dependency Care Center, Secretary/Treasurer of Chemical Dependency Programs of Montana

Mike DaSilva, City Commissioner, Chairman of Helena Stop DUI Task Force

Barbara Moy, Helena Stop DUI Task Force

Jim Manion, Alcoholics Anonymous Association Montana

Peter Funk, Assistant Attorney General, Department of Justice

Leonard Wortman, Co-Chair of Jefferson County DUI Task Force

Proponent Testimony:

Wally Jewell stated that MMA supports this legislation mainly because it attempts through the drivers license suspension and revocation to increase the length of time of that the limited Jurisdiction Courts would have jurisdiction (See EXHIBITS 1, 2 and 3).

Mike Ruppert stated that he recommends a Do Pass on HB 425. He addressed the treatment part of the Boyd Andrew Center or the help part of this DUI legislation. He said there are two kinds of people that get DUI's, people that do have

drinking problems, and people that don't (EXHIBIT 4).

Mike DaSilva stated that there are a lot of people out there who are driving drunk who need help, these people have an addiction or disease. Most of them can't stop drinking which means no matter how many times you pick them up, it is guaranteed they are going to drive drunk again. There is help for these people. HB 425 allows for the people who need the program, whether they go kicking and screaming or voluntarily it does get them help. Also, kids can drink and get away with it. They are drinking and they are drinking more, the younger they start drinking, the worse chance they have of developing a problem. We must give a clear, concise message to kids that it is not alright for them to drink in any way, shape or form. HB 425 is an excellent bill that clears up the language and makes things possible to happen that can help people stop driving drunk.

Barbara Moy stated that there is a high percentage of individuals that are arrested for DUI that are diagnosed as problem drinkers or alcoholics (EXHIBIT 5).

Jim Manion stated that it is no secret that DUI legislation has a great deal of impact on highway safety issues. DUI is the leading cause of death to people ages 15 - 40. It would be nice for us not to have to worry about a lot of these highway safety laws. For those of us who have been involved in highway safety education, it would be increasingly clear that the education only goes so far. In most highway safety matters, what proves effective in tough enforceable laws will deter people from getting behind the wheel after drinking.

Peter Funk said that the continued suspension or revocation of a drivers license until treatment or the ACT program is completed is necessary. It is a concern that there is not a reporting procedure built into this bill as far as who will notify the Department of Justice that the treatment has not been completed. Mr. Funk stated that on the page 4, line 22 is the sentencing provision which deals with evaluation and treatments. In this paragraph the counselor providing education or treatment must notify the Court both of the commencement of that and at the completion of that. If the provision dealing with suspension or revocation of licenses pass with the rest of the bill, that particular paragraph on page 5 should be amended to make clear whos responsibility it is, either the treatment program or educational program, or the Court system to report to the division of motor vehicles that the treatment has or has not been completed.

The provision which eliminates the expungement of the record for DUI offenders, to their knowledge, is the only offense within the Motor Vehicle Code that there is an explicit direction to expunge the record. Every other offense in the Motor Vehicle Code does in fact stay on your record forever.

It is not necessarily reported and action is not taken on it because they have a three year limitation under the habitual traffic offenders section of the code for counting these against a person. It is extremely important for sentencing courts to use that so they have an accurate view of a drivers record.

Leonard Wortman stated that he is a recovering alcoholic and has been arrested three times. He was never required to complete the ACT program or any other type of court school. Mr. Wortman stated that if he would have had to go to treatment the first time he was picked up, he would have saved himself 13 years of total misery by being forced to go into treatment at an early age. He recommend a Do Pass on the bill.

Marolane Stevenson supports HB 425 (See EXHIBIT 6).

Testifying Opponents and Who They Represent:

Walter Jackovich, Butte Bar/Restaurant Owner

Opponent Testimony:

Walter Jackovich stated that he is opposed to HB 425 on the grounds that most of his customers are not people that are causing the problems out on the highway. His customers have no rights when you are picked up for DUI. They are immediately tried, convicted and executed because they have a .01% alcohol content in your bloodstream. He opposes in the first offense increase in the penalty for DUI. The person should have a chance and it should be up to the discretion of the judge to observe and look into each circumstance of a DUI. Not everyone that drives becomes a killer automatically just because they have a few drinks.

Questions From Committee Members:

- Rep. Brown asked Rep. Vincent what would happen to someone on a first offense who runs into someone and is injured or killed. Is there a statute on the books now that provides for a fairly heavy penalty? Rep. Vincent said that there is, HB 425 does not address that, it attempts to address the deterrent aspect to make sure that that accident never happens in the first place.
- Rep. Brown asked what the statistics are on first offense in 1988 in Montana for first offenders as opposed to second or third violations? Rep. Vincent stated that this particular bill does not address first offense in regard to penalty.
- Rep. Hannah asked Mr. Ruppert what the recovery rates were for voluntary or enforced acceptance into their program for juveniles? Mr. Ruppert stated that studies have shown that voluntary and enforced recovery are identical. He said most

treatment centers say their recovery is 80%. In an ideal world it is going to 65% - 70%.

Rep. Gould asked Mr. Funk if his suggestion pertaining to when a person has a DUI on their record for five years and it remain in their record, but it cannot be used in subsequent sentencing after a period of time? Mr. Funk said that he meant to suggest by his comments that it simply remain a part of the record, not there be any restriction as far as a future sentencing course ability to use or not use that.

Rep. Brooke asked Mr. Jackovich that in Butte is there a Homefree program, a taxi cab system, and a designated driver program that is encouraged? Mr. Jackovich said that Butte has Homefree and a taxi system, and they are in the process of developing the designated driver program. Through the industry there is also a TIP program that they try to promote within the industry.

Rep. Rice asked Rep. Vincent if the statistics say the first offender has driven drunk many times before he was actually picked up? Rep. Vincent stated that the statistics are clear on that, whether it is the first time or the 200th time. If he crosses that center line it doesn't make any difference whether it is the first time or the 2000th time, the results are the same.

Rep. Darko asked Mr. Jackovich as to how much use they see at the programs they have set up as far as safe drivers, etc., but what if people aren't willing to use them. Mr. Jackovich stated that they are being enforced all over the country and Helena has one of the best programs going, it is hard to change peoples habits.

Rep. Darko asked Mr. Jackovich if it is his conclusion that even if they have these programs in existence that they really can't force people to cooperate, and as a general rule is the acceptance of a program slow and coming? Mr. Jackovich stated that it is slow. Some of his customers have been picked up and few have had accidents, but these people are paying their taxes, working, and raising families. He stated that his customers aren't criminals and they shouldn't be treated like criminals, they should have a chance after their first offense. If they are engaged in an accident where someone is killed then the court should act accordingly.

Closing by Sponsor:

Rep. Vincent stated that the first point he would like to make is that the first chance hundreds of times has meant the end of a life in Montana. One out of ten people are driving drunk every Friday and Saturday night, maybe more. Out of every 2,000 drunk drivers, only one is caught. Most of these people are driving at least 100 times intoxicated before

they are caught the first time. That first chance isn't going to mean very much if it results in the death of the loved one that you have.

Rep. Vincent said that HB 425 states that we will do all we can to deter you, but if you drink and drive, we will punish you then we will help you. We will help you not only for your own good, but for our mutual safety. This bill represents an opportunity to save lives and to help those people that are endangering your lives, my life and the lives of our families everyday.

Rep. Vincent proposed an amendment (EXHIBIT 7) and closed the hearing by saying that "drunk drivers bring families together . . . at the funeral."

HEARING ON HOUSE BILL 404

Presentation and Opening Statement by Sponsor:

Rep. Keller stated that HB 404 proposes an amendment to the statute of Section 68-61-8714 Montana Codes Annotated. Two changes in the DUI clause are the conviction of DUI from 60 days to 6 months and the fine stays the same, and the penalty to put it into a felony of five years or \$5,000. This legislation is proposed by the County Attorney's at their request.

Testifying Proponents and Who They Represent:

John Connor, County Prosecutors Services Bureau of the Department of Justice, Montana County Attorney's Association
Wally Jewell, Montana Magistrates Association
Mike DaSilva, Helena Stop DUI Task Force

Proponent Testimony:

John Connor stated that HB 404 was requested by the Montana County Attorney's Association and was done so primarily from the frustration that the prosecutors feel by the inability to get accomplished the kinds of treatment programs that the legislature has mandated by statute in prior years for first offense DUI's. He said it is imperative that HB 404 be not viewed as a punitive measure in terms of the first offense DUI situation. It is not intended to be punitive and it won't be used as a punitive measure. The provisions with respect to six months provides in effect that it allows the court the jurisdiction over the first time offender to carry out the treatment programs that are necessary. When a first offender comes before the court and treatment is ordered and the offender leaves the court, the situation with respect to treatment becomes bad thereafter. If the offender doesn't complete the program and the court and the prosecutor are notified immediately that the offender has not attended, the situation can be dealt with. The offenders probation can be

DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date FEB. 7, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		



Town of Superior

P.O. Box 726
Superior, Montana 59872
(406) 822-4672

EXHIBIT 1
DATE 2-7-89
HB 425

January 27, 1989

Wally Jewel

520 Tamarack

Helena, Montana 59620

Dear Wally,

The general question of the length of jurisdiction is first offense DUI and DUI Per Se cases has been discussed in general at the schools we've attended; I believe that it was mentioned as a subject that needs some legislative clarification.

The question has arisen again in my court. I had to dismiss a contempt of court charge that I filed for failure to complete the "treatment as recommended". The defense lawyer's position was that the court's jurisdiction extends only 60 days (10 in Per Se). He says that after that time has run, the defendant can quit, if he desires; the court cannot revoke or charge contempt because the law is embodied by the statutes and not by the Montana Rules - which he says are a suggestion, not law.

MY Town cannot afford a supreme court case to settle this question. Neither do I want to give in. Surely the Legislature won't mandate that the courts order treatment that runs beyond the 60 days and then not give us the authority to assure that the order is obeyed.

A clear statement of the length of our jurisdiction is badly needed in first offense DUI and DUI Per Se cases. Either that, or we should be excused from ordering the additional treatment. A powerless court is a subject for



Town of Superior

P.O. Box 726
Superior, Montana 59872
(406) 822-4672

EXHIBIT 1
DATE 2-7-89
HB 425

Page two

laughter. The word gets around fast. I am certain that this arguement will appear in my court more and more often.

If you agree with me that this question needs an immediate legislative solution, would you please turn your considerable talents and knowledge to this problem? If you are already working on it, please let me know if there is anything I can do to help. I am writing my representatives. You nay use this letter if you wish.

Sincerely,

Richard M. Ackman

Town Judge Superior, Montana

P.S. I will be staying at the Coach House East in Helena from February 14th until the 17th, if you want to talk to me.

ANALYSIS OF MONTANA DUI CONVICTIONS
FOR YEARS OF 1985, 1986, 1987, 1988

	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>
MONTANA CONVICTIONS	8102	7406	6931	6714
OUT-OF-STATE CONVICTIONS	292	232	360	243
TOTAL CONVICTIONS	8394	7638	7291	6957
	<u>PER</u> <u>CENT</u>	<u>PER</u> <u>CENT</u>	<u>PER</u> <u>CENT</u>	<u>PER</u> <u>CENT</u>
TYPE OF OFFENSE				
DUI	66.7	63.8	57.7	55.5
DUI PER SE	10.1	10.6	14.5	14.5
TOTAL FIRST OFFENSES	76.8 <i>6222</i>	74.4 <i>5510</i>	72.2 <i>5004</i>	70.0 <i>4699</i>
TOTAL SECOND OFFENSES	19.4 <i>1571</i>	20.6 <i>1525</i>	20.3 <i>1406</i>	22.0 <i>1477</i>
TOTAL THIRD OR MORE OFFENSES	3.8 <i>308</i>	5.0 <i>370</i>	7.5 <i>519</i>	8.0 <i>537</i>
TOTAL MULTIPLE OFFENSES	23.2 <i>1879</i>	25.6 <i>1895</i>	27.8 <i>1926</i>	30.0 <i>2014</i>
JUVENILE OFFENSES	1.8	1.6	1.1	2.9
ARREST BY AGENCY (In State)				
City Police	46.3	49.6	45.6	50.4
Sheriff	22.3	23.6	26.7	21.0
Highway Patrol	25.9	22.4	24.0	23.7
BIA	3.1	3.0	3.3	3.7
Others and Unknown	2.3	1.4	.4	1.0
OUT-OF-STATE CONVICTIONS	3.4	3.0	4.9	3.4
INAPPROPRIATE ACTION BY COURTS				
Late Tickets		.5	.5	.3
Sentences Contrary to Law		2.9	2.9	1.9
TOTAL	5.6	3.4	3.4	3.2
CONVICTIONS BY SEX				
Male	84.7	84.6	82.9	82.0
Female	15.3	15.4	17.1	18.0
MULTIPLE OFFENSES BY SEX				
Male		90.2	87.4	86.4
Female		9.8	12.6	13.6
MISCELLANEOUS				
BAC Refused			12.7	12.8
Average BAC			.18	.18

ALCOHOL IN OTHER ARRESTS

Various research studies show different but high rates of involvement by alcohol in other offenses.

Example: In December 1969, the Los Angeles Police Department checked the alcohol involvement of all incidents requiring police intervention and of all arrests:

19.4% of all incidents involved alcohol

71.9% of all arrests involved alcohol

The degree of alcohol-involvement for different categories of arrest was as follows:

Drunk and under the influence	93.7%
Disturbance	82.4%
Burglary and theft	49.7%
Traffic violation and accident	67.3%
Family and neighborhood dispute	92.3%
Assault with a deadly weapon	78.5%
Miscellaneous	64.7%
All arrests	71.9%

In violent crimes against the person, various studies report the following degrees of alcohol-involvement:

Murders	64%
Assaults	41%
Forcible rape	34%
Other sex crimes	29%

Sources: LAPD, NIAAA

COURT PROCESSING

Among persons formally charged with offenses in 1976, court action resulted in the following patterns:

OFFENSE	PERCENT GUILTY AS CHARGED	PERCENT GUILTY LESSER OFFENSE	PERCENT DISMISSED OR ACQUITTED	PERCENT REFERRED TO JUVENILE COURT
Drunkenness	85.5	0.5	12.0	2.0
DWI	75.7	12.7	9.9	1.7
Disorderly Conduct	70.4	1.3	19.3	9.0

For comparison:

Drugs	44.9	4.1	24.4	26.5
Larceny- Theft	46.3	2.8	14.5	36.4
Index Offenses	40.1	4.2	16.1	39.6
All Offenses	60.3	3.4	17.7	18.7

Drunkenness had the highest conviction--rate of all offenses, and the second lowest rate of juvenile-involvement. DWI had the third highest conviction-rate of all offenses, and the lowest rate of juvenile-involvement.

Source: FBI Crime Report for 1976

CORRECTIONS (Jail, Probation, Parole)

Each year some 3 million persons are for a time under the control of the correctional system. On any given day, about 1.5 million people are under such control, about one-third of them in jail, two-thirds on parole or probation.

Various studies estimate that:

70% of the prison population have alcohol problems.

40% of the probation/parole population have alcohol problems.

DO ALCOHOL AND DRUGS CAUSE CRIME?

The Drug Abuse-Crime Link is Complex.

Research on the link between crime and drug abuse has yielded what often appear to be conflicting conclusions. Studies show that, among prison inmates, the drug abusers, more than others, tended to be involved in money-producing crimes.

The Rand career criminal study found that, among felons, drug abusers committed more burglaries, con-type crimes, and drug sales than burglars, con-men, and drug dealers who did not use drugs. For other crimes, there were no appreciable differences between drug users and nondrug users in either the number of prisoners involved or in the number of crimes they committed.

Similar findings emerged from the 1979 national survey of State prisoners. Among violent criminals, only robbers had a relatively high proportion (38%) of inmates who said they had been under the influence of drugs, and most of these said they had been under the influence of marijuana.

Ball's study of Baltimore addicts showed that drug users committed an enormous number of crimes, mainly theft and drug dealing, and that, on the average, the typical addict committed a crime every other day. However, other research shows that most heroin-addicted criminals were involved in crime before they became addicted and that traditional income sources, rather than street crimes, are the major source of support for the drug habit.

Drug and Alcohol Abuse was Far Greater Among Offenders than Among Nonoffenders

According to findings from a 1979 survey of prison inmates--

- * More than 75% of all State prisoners had used one or more illicit drugs in their lifetime, about double the rate for the U.S. population, reported by the National Institute of Drug Abuse.
- * Heroin, used by only 4% of all youths age 18-25, was used by 28% of all inmates, most of whom used it at least once a week before they entered prison.
- * Cocaine, used by 41% of the prisoners, was also widely used by 18-to-25 year olds outside prison (28%).

- * Marijuana was the most commonly used drug, both by inmates and by persons outside prison. Of all prisoners, 86% had used it, compared with 68% of the general population age 18-25. The number of young people who had used only marijuana and no other drug was the same for inmates and the general population -- one out of five.
- * Amphetamines and barbituates were used by close to 40% of the prisoners, about twice the proportion who used it outside prison.
- * More than a third of all inmates drank heavily; that is, at any one drinking session they typically drank the equivalent of eight cans of beer, seven 4-ounce glasses of wine, or nearly nine ounces of 82-proof liquor; during the year before their arrest, two-thirds drank heavily every day.

At the Time of Their Offense,
a Third of the Prisoners
Had Been Under the Influence of a Drug.

- * Most were under the influence of marijuana, but usually in combination with another more serious drug such as heroin.
- * 9% were under the influence of heroin.
- * Among inmates, women were more likely than men to have been drinking heavily (35% v. 15%).

Drinking Problems Were Common for Career Criminals.

- * Prison inmates with a large number of prior convictions were more likely than other inmates to have been drinking just prior to their current offense.
- * Habitual offenders drank more frequently, consumed more at one session, and were more likely to get drunk than one-time offenders.

Source: "Report to the Nation on Crime and Justice," U.S. Dept. of Justice, 1983

7 January 1989

Testimony offered in support of HB425, a bill for an act entitled: "An act to modify the driving under the influence and per se penalty statutes relating to alcohol- or drug-related driving offenses."

Given by Wallace A. Jewell on behalf of the Montana Magistrates Association representing the judges of courts of limited jurisdiction of Montana.

The Montana Magistrates Association supports this legislation as it attempts through driver's license suspension/revocation to increase the length of time the limited jurisdiction courts would have jurisdiction.

In March of 1987 I was fortunate enough to attend the National Judicial College at the University of Nevada Reno. It was there that I learned that any action by a court represents the most forceful and probably the first formal action by society against abusive or dependent behavior. Some 80% of our prison populations have drinking problems. Courts in general have yet to be persuaded to intervene at the source of such criminal conduct, preferring to use only traditional criminal sanctions, ie, jail, fine, etc. Judges see more substance dependent people than all the treatment personnel in the country yet many lack expertise in identifying or responding to it.

This is why it is so important that limited jurisdiction judges be able to rely upon the expertise of chemical dependency experts when a sentence is imposed. We would support an amendment requiring treatment unless deemed unnecessary by the counselor conducting the program.

Contrary to popular belief, "social drinkers" for the most part are not arrested for DUI. It is now estimated that in most states the probability of DUI arrest is 1 in 280 trips. The chance of no DUI arrest is 97%. Only when you drive DUI about twice a week do you have at least a 50% chance of an arrest.

Of 1208 DUI convictions in Allen County, Indiana, in 1985, 90% were diagnosed as problem drinkers or alcoholics with an average BAC of 0.19%. A 1983 study in Pennsylvania, obtained similar results. Of 21,000 offenders, 75% were either alcoholic or problem drinkers with an average BAC of 0.19%.

In Montana it appears that the "social drinker" is being addressed by current statute but little progress is being

-2-

made with regard to the multiple offender. In 1985 the multiple offender comprised 23.2% of the total number of DUI's, 1879 of 8102. Ever since then that figure has been on the rise. To 25.6%, 1895 of 7406, in 1986; to 27.8%, 1926 of 6931, in 1987; to 30%, 2014 of 6714, in 1988. Some provision needs to be made in the statute to address the first offense DUI offender who is not the "social drinker."

If stronger treatment measures were incorporated into current statute and the limited jurisdiction courts were given more time to effect a behavior change, we think the number of multiple offenders would decrease.

I am handing out a letter from the town judge in Superior, Montana, that shows just how frustrating this problem of length of jurisdiction can be.

I encourage you to support this legislation and give it a do pass recommendation from the committee.

Wallace A. Seavey

EXHIBIT 3
 DATE 2-7-89
 HB 425

ANALYSIS OF MONTANA DUI CONVICTIONS
 FOR YEARS OF 1985, 1986, 1987, 1988

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MISCELLANEOUS				
BAC Refused			12.7	12.8
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Testimony in Support of HB 425

presented February 7, 1989

I strongly recommend the House Judiciary committee issue a "Do Pass" recommendation for HB 425 as amended.

The intent of the original law was to insure that all DUI offenders who have drinking problems receive alcoholism treatment in order to prevent future offenses. The assumption was that jail, fines and education would not stop an alcoholic from continuing to drive under the influence. The assumption is still valid, however many DUI offenders who are diagnosed as alcoholic are not receiving treatment. The amendment offered today will strengthen this portion of the law.

The percentage of repeat offenders has steadily increased. This is attributable to the fact that few first offenders who are diagnosed as alcoholic are entering treatment. Records received from Lewis and Clark County Courts indicate that during 1988 court action was taken on only 2 of 83 first offenders who refused treatment. During the same period court action was taken on only 10 of 36 multiple offenders. Clearly the law needs to make treatment for alcoholic DUI offenders emphatically mandatory.

Two myths need to be dispelled.

MYTH

Many 1st offense DUI offenders are merely "unlucky" social drinkers who have broken the law only on the occasion they were arrested.

An alcoholic must want help for treatment to be effective. Forced treatment does not work.

REALITY

DUI offenders in Lewis and Clark County report an average of 368 violations before they were arrested the first time.

5.7% of all offenders reported less than 20 offenses before first arrest.

44.7% of all offenders reported 100 or more offenses before first arrest.

Motivation upon entry into treatment is unrelated to outcome. Several studies have shown that the recovery rates of "voluntary" and "involuntary" groups are identical.*

HB 425 as amended will strengthen our DUI laws and reverse the trend of increased multiple offenses.

Respectfully submitted by:



Michael E. Ruppert, M.A., C.C.D.C.
Executive Director - Boyd Andrew Chemical
Dependency Care Center - Helena
Secretary/Treasurer - Chemical Dependency
Programs of Montana

* See Perspectives on Treatment. Daniel J. Anderson. 1981
Hazelden Foundation.

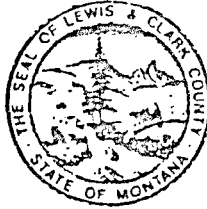


EXHIBIT 5
DATE 2-7-89
HB 425

City-County Building
P.O. Box 1723
Helena, Montana 59624
Telephone 406/443-1010

LEWIS AND CLARK COUNTY

STOP-D.U.I. Task Force

Health Department

The Helena/Lewis and Clark County STOP-DUI Task Force supports HB 404 for these reasons:

- * A person arrested for 1st offense DUI has usually driven drunk numerous times prior to the arrest. A National Highway Traffic Safety Study shows that statistically, a driver would have to commit between 200-2000 drunk driving violations to be picked up just once.
- * The vast majority of those who are arrested drive drunk on the road 4-5 times a week for several years before being caught.
- * In 1987, 73% of all traffic deaths in Lewis and Clark County were caused by drinking drivers... 11 people died... 159 were injured...

HB 404 will carry a strong message to the people that DUI is a serious offense, and that stronger, consistently applied laws are necessary to reduce DUI-related crashes and fatalities.

The Helena/Lewis and Clark County STOP-DUI Task Force supports HB 425 for these reasons:

- * A large % of individuals arrested for DUI are diagnosed as either alcoholic or problem drinkers.
- * The average BAC of a person arrested for DUI is .10% or more, with BAC's of .18% to .20% being average. To reach a BAC of .10% or more, an abnormal use of alcohol is required.
- * Because many DUI offenders are either alcoholics or problem drinkers, they need appropriate sentencing strategies that compel them to abstain from drinking altogether.

HB 425 conveys an appropriate sentencing strategy, the suspension of a driver's license until treatment is completed. Studies have consistently proven that treatment programs offer a positive means to reducing subsequent drinking and driving by DUI offenders.

The Helena/Lewis and Clark County STOP-DUI Task Force supports HB 497 as it proposes a strict and consistent means to handling MIP's, to deterring youth from repeat offenses involving alcohol and drugs. Some information gathered from a recent drug and alcohol survey given students in School District 1, Helena grades 7-12, provides these "insights":

- * 18%-20% of grades 7-12 reported getting drunk before age of 12
- * 53% of 11th and 12th graders admitted being drunk 30 days prior to survey
- * 60% of 11th and 12th graders admitted to drinking and driving

It's because we care.



February 1, 1989

EXHIBIT 6

DATE 2-7-89

HB 425

Dear Judiciary Committee,

I am writing in support of more stringent laws regarding drinking and driving and the enforcement of those laws.

Four years ago I was a pedestrian hit and run over by a pickup driven by a young man who was charged with driving while intoxicated. Unfortunately for me and maybe someone else in the future, he "got off".

I was in intensive care for one month and the hospital for two months with a body so broken that it did not look human. The pain was excruciating. I could not live without morphine. After seven operations and approximately \$150,000.00 worth of doctor bills I look o.k. But I must live with chronic pain, loss of vision, loss of hearing, and loss of other abilities. My life expectancy has surely been reduced. There are many more like me because with modern medicine we are living through it.

Frankly, people who die as a result of a drinking and driving accident are luckier than those who must live in a wheel chair, with limited mental abilities, with pain, etc. These people's quality of life has been reduced because someone chose to drink and drive, and therefore, knowingly impaired the life of an individual.

Not only must the victim suffer but the family is affected. They must change their lives too. Over 80 percent of couples who experience a tragedy such as these get divorced. Ask the psychologists.

Those who socially drink and drive must be penalized for knowingly doing something wrong. They are driving with reduced visability and reaction time. We all know what the effects of alcohol are.

A \$500.00 fine and a driver's license revoked for 6 months or a year is hardly retribution for the damage done to another's life for the rest of his life. Those who are alcoholic must receive treatment in addition to fines and their licenses being revoked because they are addicted and will not change unless the punishment is so severe that they must change.

Over 60 percent of vehicle accidents are alcohol related. I have a right to be safe and so do other good citizens. If people wish to drink they should "stay put" or have someone else drive. I do not think that is asking much.

I am not sure why I lived. Perhaps, it was to prevent others from having their lives destroyed. Maybe, I can influence some legislators to enact laws to protect the innocent. The penalty must be severe enough to keep social drinkers and alcoholics off the highways. In Germany if any individual is "picked up" his license is revoked for life. They do not have a problem.

We must do something to deter people from drinking and driving. Bills such as those proposed by Vicki Cocchiarella are a "step" in the right direction.

Sincerely,

Marolane Stevenson

Mrs. Marolane Stevenson

PROPOSED AMENDMENTS HB 425

- (1) Page 5, line 1.
Strike: "may"
Insert: "shall"
- (2) Page 5, line 2.
Strike: "or both, if"
Insert: "unless"
Strike: "necessary"
Insert: "unnecessary"
- (3) Page 7, line 11.
Strike: "may"
Insert: "shall"
- (4) Page 7, line 12.
Strike: "or both, if"
Insert: "unless"
Strike: "necessary"
Insert: "unnecessary"

VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. HOUSE BILL 425

DATE FEB. 7, 1989

SPONSOR REP. VINCENT

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Shelly Laine	Representing City of Helena	✓	
Don McMeekin	Representing Lewis & Clark STOP DUI Task Force	✓	
Lois K. McMeekin	Representing Lewis & Clark STOP	✓	
Judy Griffith	Rep Helena Project Care Rtc DUI Task Force	✓	
Bob Durkee	MTA		✓
Barbara May	Lewis & Clark Co. DUI Task Force	✓	
MIKE DASILVA	STOP DUI TASK FORCE	✓	
Bill Elisk	Helena	✓	
Alice Armstrong	2919 Country Club Ave Helena	✓	
WALTER JACKOVICIT	3405 Hill Ave Suite Boyd Andrew CDC		✓
Mike Ruppert	215 N. Ridge Helena	✓	
Mike Kuehn	Chem Dependency Program of Montana - Helena	✓	
Leonard Watson	Bellevue Co DUI Task Force	✓	
Wally Jewell	MT MAG ASSOC	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on February 9, 1989, at
8:00 a.m.

ROLL CALL

Members Present: All members were present

Members Excused: None.

Members Absent: None.

Staff Present: Julie Emge, Secretary
John MacMaster, Legislative Council

Announcements/Discussion: None.

HEARING ON HOUSE BILL 330

Presentation and Opening Statement by Sponsor:

Rep. Jan Brown, House District 46 stated that the purpose HB 330 is to increase certain fees of the District Court, requested by the county commissioners.

Testifying Proponents and Who They Represent:

Dave Fuller, Chairman of the Lewis and Clark County Board of Commissioners

Proponent Testimony:

Dave Fuller stated that the increases that would result from this bill would go directly into the District Court fund. As the Committee is most likely aware, certain fees currently go to various places including the State, the judge retirement fund and some to the county general fund. This would be earmarked specifically for the District Court. Mr. Fuller stated the reason they want this bill is because district courts in most counties are not funded sufficiently under the statutory six mills. Quite simply, HB 330 is a revenue generating devise for district courts.

Testifying Opponents and Who They Represent:

None.

Brooke. A vote was taken and CARRIED unanimously.

Rep. Gould moved to amend under the concealed weapon section the fee left the way that it currently is for all local elected officials and/or officers of the court. There is currently no fee at all and he would like to see it left at that. Motion was seconded by Rep. Aafedt. A vote was taken and FAILED.

Recommendation and Vote: Rep. Wyatt motioned DO PASS AS AMENDED, seconded by Rep. Stickney. A vote was taken and CARRIED with Rep. Hannah voting No.

DISPOSITION OF HOUSE BILL 425

Motion: A DO PASS motion was made by Rep. Brooke, motion seconded by Rep. Darko.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Darko moved Rep. Vincent's proposed amendments on page 5, line 1, strike "may", insert shall. Page 5, line 2, strike "or both if", insert unless. Following considered strike "necessary", insert unnecessary. Motion was seconded by Rep. Knapp.

Rep. Hannah stated that it appears to him that what they are saying is that every person that gets picked up, the vast majority of them will end up being required to take the treatment course. He feels that is wrong. The presumption is that every kid that gets picked up has got a drinking problem. This is the wrong direction to go and they have a wrong relationship with diagnosis and treatment.

Rep. Aafedt agreed with what was said by Rep. Hannah. If a person that does not normally drink gets picked up for a DUI, automatically they are considered an alcoholic and must go to a treatment center. That is not right.

Rep. Brown stated that his main concern is that they are trying to treat a disease for someone that has three or four or more DUI convictions on their record. Personally, Rep. Brown stated that he is committed to believing that if a person has more than one conviction, they most likely have a problem. Since 1981, particularly 1981 and 1983, when the legislature passed Montana's first DUI laws, the reduction in drunk driving accidents has reduced substantially. What they are trying to do with the DUI laws is reduce drunk driving and treat a disease. There is no question that this bill is the best vehicle for the treatment of alcoholism. However, Rep. Brown's concern is that they essentially set up a counselor in a community based drug treatment program to do not only an assessment but to additionally recommend treatment. Recommending treatment is a much longer and more heavily involved process. Aside from that, try to find in

the code books what the statutory requirement is for the counselors. The question is, who makes that decision. Should it be a relatively lesser trained counselor in an alcohol treatment program, who may or may not have some advanced degrees, or should it be someone else?

Rep. Darko stated that on the issue of alcoholism, she feels if a person has had 2 or 3 glasses of wine and gets behind the wheel of a vehicle and been picked up and convicted of a DUI, then maybe that person needs some education. Any counselor that has any common sense, given the circumstances, is going to put a person in treatment. However, that education process will teach those people a lot. Those people that don't think that they have a problem and have not been educated, are the ones that really need to be educated on the disease.

Rep. Mercer commented that he would like to draw the Committee's attention back to the amendment for a minute, as he feels they are debating over something that is entirely different. The current law states that if a person commits a DUI offense, they shall complete an alcohol information course. The counselor may then include alcohol or drug treatment, or both, if he considers it necessary. If the counselor assumes something is either necessary or unnecessary and there is nothing in between those two concepts, then all they are doing is flip-flopping it. It shifts the burden from the counselor making a determination one way rather than the other. Rep. Mercer pointed out one technical problem that he sees with the amendment. The old law says that they may have alcohol or drug treatment or both. With the proposed amendments, they can only give them alcohol treatment or drug treatment. They cannot give them both. It seems to him that if they leave the law as it currently is, then they must take the course and the counselor determines if they need alcohol or drug treatment. Whereas with the amendment, the counselor determines if treatment is needed, and if he thinks it is unnecessary then they don't go to treatment. If the law is left as it currently stands, the counselor can decide if the person needs drug or alcohol treatment or both. If they go with the amendment, the counselor can only do one or the other. Rep. Mercer suggested to leave the bill as it is.

A vote was taken on the Vincent amendments moved by Rep. Darko and FAILED with Rep. Addy voting aye.

Rep. Brooke moved to amend as shown as 10 and 11 of the attached committee report. Motion seconded by Rep. Mercer. Motion CARRIED with Rep.'s Hannah, Wyatt and Brown voting against the amendment.

Rep. Boharski moved to amend page 4, line 25, strike "approved by the Dept. of Institutions", and page 7, lines 10 and 11, strike "approved by the Dept. of Institutions".

Rep. Hannah spoke against the amendment and expressed that he feels they should leave it as it is. The whole question of licensing and certification is unsolved and he would be more comfortable leaving it as it is rather than trying to vote on something that is unclear.

Rep. Boharski stated that he would also like the amendment to read "certified". They are leaving up to the counties an extra burden of making sure that they keep enough of the dept. approved programs out there.

A vote was taken on Rep. Boharski's proposed amendments and FAILED with Rep. Boharski voting aye.

Rep. Brown stated that if the Committee looked at the statistics, drunk driving accidents and fatalities have been substantially reduced in Montana. Essentially, what they are doing is throwing the book at people instead of trying to treat the disease; thus, resulting in loss of job, costing cash flow, and not helping the individual that is having a real alcohol related problem. In the persay statute where somebody has already pled guilty on a second or third offense, does the Committee want to put those people in jail, fine them \$1,000 to \$5,000, and take away their economic livelihood? What the Committee needs to do is mandate an assessment for alcoholism and judicial determination and a court supervised treatment program. The priority should be treating these people's disease. The court needs to control this and set standards and do a better job of monitoring this type of a situation.

Rep. Mercer moved to amend for driving under the influence on a second or third or subsequent conviction, as well as driving with excessive blood alcohol concentration, they shall complete an alcohol information course approved by the department. That information course shall include alcohol or drug treatment or both. The option of the counselor is taken out. Motion was seconded by Rep. Gould.

Recommendation and Vote: Rep. Hannah made a substitute motion to TABLE HB 425, motion seconded by Rep. Aafedt. A Roll Call Vote was taken and FAILED with 8 voting aye, and 9 voting nay.

Amendments, Discussion and Votes: Rep. Gould suggested they leave the first offense penalty as it currently is (requiring court school attendance). A second, third or subsequent offense would result in mandating treatment. He does not; however, like the idea of taking away the license on the first DUI offense.

Rep. Mercer offered a friendly amendment in addition to the above proposed amendment to add on page 6 on a second or subsequent offense. Additionally, strike the penalty

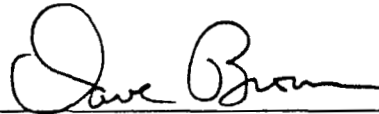
increases that are set forth in section 3 of the bill so that the penalty for persay would remain the same. Motion was seconded by Rep. Strizich and CARRIED unanimously.

Recommendation and Vote: Rep. Darko moved HB 425 DO PASS AS AMENDED, motion was seconded by Rep. Rice. A vote was taken and CARRIED unanimously.

ADJOURNMENT

Recessed at 10:40 a.m. and reconvened at 6:55 p.m.

Adjournment at 9:15 p.m.



REP. DAVE BROWN, Chairman

DB/je

3408.MIN

DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date FEB. 9, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

ROLL CALL VOTE

JUDICIARY

COMMITTEE

DATE 2-9-89

BILL NO. HB 425

NUMBER 1

NAME	AYE	NAY
REP. KELLY ADDY, VICE-CHAIRMAN		X
REP. OLE AAFEDT	X	
REP. WILLIAM BOHARSKI		X
REP. VIVIAN BROOKE		X
REP. FRITZ DAILY		
REP. PAULA DARKO		X
REP. RALPH EUDAILY	X	
REP. BUDD GOULD	X	
REP. TOM HANNAH	X	
REP. ROGER KNAPP		X
REP. MARY McDONOUGH		X
REP. JOHN MERCER		X
REP. LINDA NELSON	X	
REP. JIM RICE		X
REP. JESSICA STICKNEY		X
REP. BILL STRIZICH	X	
REP. DIANA WYATT	X	
REP. DAVE BROWN, CHAIRMAN	X	

TALLY

8 9

Julie Enge
Secretary

Dave Brown
Chairman

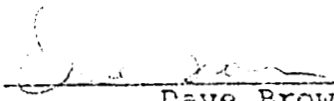
Motion: Motion to TABLE made by Rep. Hannah,
seconded by Rep. Aafedt. Motion FAILED.

STANDING COMMITTEE REPORT

February 13, 1989

Page 1 of 2

Mr. Speaker: We, the committee on Judiciary report that House Bill 425 (first reading copy -- white) do pass as amended.

Signed: 
Dave Brown, Chairman

And, that such amendments read:

1. Title, line 5.

Strike: "AND PER SE PENALTY"

Strike: "RELATING TO"

2. Title, line 6.

Strike: "ALCOHOL- OR DRUG-RELATED DRIVING OFFENSES"

3. Title, line 7.

Following: line 6

Insert: "DRIVER'S LICENSE"

Following: "SUSPENSION"

Insert: "FOR A SECOND OR SUBSEQUENT OFFENSE"

Following: "UNTIL"

Strike: "TREATMENT"

Insert: "AN ALCOHOL INFORMATION COURSE, AND TREATMENT IF TREATMENT IS ALSO ORDERED,"

4. Title, line 9

Following: "CONVICTIONS"

Insert: "FOR PURPOSES OF THE DUI PENALTY SECTION"

Strike: "UNDER ONE"

Insert: "OF A PER SE"

5. Title, lines 10 through 12.

Strike: "OTHER" on line 10 through "SAME" on line 12

Insert: "DUI OFFENSE SECTION"

6. Title, line 12.

Strike: "AN"

Insert: "A DUI"

7. Title, line 13.

February 13, 1989

Page 2 of 2

Following: "THAT"
Insert: "DUI"

8. Title, line 14.
Following: "61-5-208"
Strike: ", "
Insert: "AND"
Following: "61-8-714,"
Strike: "AND"

9. Title, line 15.
Strike: "61-8-722,"

10. Page 2, line 24 through line 2 on page 3.
Strike: ", except" on page 2, line 24 through "completed" on line 2 of page 3

11. Page 3, lines 8 through 10.
Strike: "person" on line 8 through the end of line 10
Insert: "1-year period passes and the person has not completed an alcohol information course, or treatment, or both, as ordered by the sentencing court, the license revocation remains in effect until the course or treatment, or both, are completed."

12. Page 5, line 1.
Following: "may"
Insert: ", in the sentencing court's discretion and upon recommendation of a program counselor,"

13. Page 5, lines 2 and 3.
Strike: ", if" on line 2 through "the program" on line 3

14. Page 5, line 3.
Following: "."
Insert: "On conviction of a second or subsequent offense under this section, in addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of institutions, which must include alcohol or drug treatment or both."

15. Pages 6 through 8.
Strike: section 3 of the bill in its entirety
Renumber: subsequent section

BILL STATUS SYSTEM
RPT S2

STATE OF MONTANA
MONTANA LEGISLATIVE COUNCIL BILL STATUS SYSTEM
CURRENT STATUS OF ALL BILLS EVER REFERRED TO (S) JUDICIARY

PAGE NBR..... 36
TIME: 12:33
DATE: 05/02/89

CHAIRMAN--BRUCE CRIPPEN
SECRETARY--ROSEMARY JACOBY
NORMAL SCHEDULE==> SITE: ROOM 325

COMMITTEE--(S) JUDICIARY
DAYS: M,T,W,T,F TIME: 10:00 A.M.

OFFICE--ROOM 412

REFER
BILL ==== DATE === LATEST DATE/ACTION ON BILL =====
SPONSOR: ADDY, KELLY
NOTE: BILL WILL BE LISTED TWICE IF REREFERRED BACK TO THE SAME COMMITTEE
=====

HB 310	02/18 03/23--(H) CHAPTER NUMBER SPONSOR: SCHYE, TED	EFFECTIVE DATE: 07/01/89 TITLE-REVISE YOUTH COURT ACT PETITION FILING TIME AND HEARING PROVISIONS
HB 312	02/06 03/24--(H) CHAPTER NUMBER SPONSOR: CONNELLY, MARY ELLEN	EFFECTIVE DATE: 10/01/89 TITLE-AMENDING CUSTODY MODIFICATION STATUTE TO DEFINE PRIOR "CUSTODY DECREE"
HB 313	02/17 04/04--(H) CHAPTER NUMBER SPONSOR: GRADY, ED	EFFECTIVE DATE: 04/04/89 TITLE-REVISE SKIER RESPONSIBILITY LAW TO ADDRESS SUPREME COURT DECISION
HB 326	02/08 03/27--(H) CHAPTER NUMBER SPONSOR: RICE, JIM	EFFECTIVE DATE: 10/01/89 TITLE-EXEMPT PARALEGALS, LAW ASSISTANTS AND STUDENTS FROM PRIVATE INVESTIGATOR LAW
HB 349	02/15 04/11--(H) CHAPTER NUMBER SPONSOR: STRIZICH, BILL	EFFECTIVE DATE: 10/01/89 TITLE-DISPOSITION OF PROPERTY USED TO VIOLATE DRUG LAWS
HB 350	02/15 04/11--(H) CHAPTER NUMBER SPONSOR: STRIZICH, BILL	EFFECTIVE DATE: 10/01/89 TITLE-CONVICTED PERSON TO PAY COST OF SUPERVISING HIS PAYMENT OF RESTITUTION
HB 351	02/15 03/27--(H) CHAPTER NUMBER SPONSOR: STRIZICH, BILL	EFFECTIVE DATE: 10/01/89 TITLE-CRIMINAL OFFENSE TO POSSESS SAWED-OFF RIFLE OR SHOTGUN
HB 368	02/09 03/27--(H) CHAPTER NUMBER SPONSOR: COCCHIARELLA, VICKI	EFFECTIVE DATE: 10/01/89 TITLE-NEGLIGENT VEHICULAR ASSAULT--LICENSE REVOCATION AND 12 CONVICTION POINTS
HB 386	02/13 04/24--TABLED IN COMMITTEE SPONSOR: KNAPP, ROGER	TITLE-DIVIDING TAXES ON PERSONAL PROPERTY SOLD IN BANKRUPTCY
HB 393	02/28 04/03--(H) CHAPTER NUMBER SPONSOR: DARKO, PAULA	EFFECTIVE DATE: 10/01/89 TITLE-UNLAWFUL POSSESSION--INCLUDE CONSUMPTION--COMMUNITY SERVICE
HB 401	02/15 04/21--(H) - SPONSOR: BROWN, DAVE	FILED WITH SECRETARY OF STATE TITLE-PERMIT PROBATION AND PAROLE OFFICERS TO CARRY FIREARMS
HB 409	02/09 03/23--(H) CHAPTER NUMBER SPONSOR: GOOD, SUSAN	EFFECTIVE DATE: 03/23/89 TITLE-CLARIFY ATTORNEY CLIENT PRIVILEGE
HB 422	02/28 04/08--(H) CHAPTER NUMBER SPONSOR: EUDAILY, RALPH	EFFECTIVE DATE: 04/08/89 TITLE-AMEND LIVING WILL ACT AS TO PEOPLE WHO MAY WITHHOLD LIFESUSTAINING PROCEDURE
HB 425	02/18 04/08--(H) CHAPTER NUMBER SPONSOR: VINCENT, JOHN	EFFECTIVE DATE: 10/01/89 TITLE-GENERALLY STIFFEN DUI PENALTIES
HB 448	02/09 03/29--(H) CHAPTER NUMBER SPONSOR: MENAHAN, RED	EFFECTIVE DATE: 10/01/89 TITLE-AUTHORIZE POSSESSION OF 25-YEAR OLD SLOT MACHINES
HB 454	02/06 03/23--(H) CHAPTER NUMBER SPONSOR: CONNELLY, MARY ELLEN	EFFECTIVE DATE: 10/01/89 TITLE-PROHIBIT APPEAL OF GUILTY PLEA TO DISTRICT COURT
HB 459	02/15 03/14--(H) CHAPTER NUMBER SPONSOR: BROWN, JAN	EFFECTIVE DATE: 10/01/89 TITLE-ALLOW JURIES OF LESS THAN 12 IN FELONY ACTIONS IF PARTIES AGREE
HB 471	02/15 03/30--(H) CHAPTER NUMBER SPONSOR: GLASER, WILLIAM	EFFECTIVE DATE: 03/30/89 TITLE-WATER DISTRICT MAY GET PREDECESSOR WATER ASSN PROPERTY BY EMINENT DOMAIN

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MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Vice Chairman Al Bishop, on March 16, 1989, at 10:00 a.m. in Room 325.

ROLL CALL

Members Present: Chairman Bruce Crippen, V.Chairman Al Bishop, Senators Tom Beck, Mike Halligan, Joe Mazurek, Loren Jenkins, John Harp and Bill Yellowtail.

Members Excused: Bob Brown and R. J. "Dick" Pinsoneault

Members Absent: None

Staff Present: Staff Attorney Valencia Lane and Committee Secretary Rosemary Jacoby

Announcements/Discussion: Senator Bishop announced that members of the committee were to be in and out of the meeting as they were required to be in other hearings during some of the same time. He conducted the first part of the meeting.

HEARING ON HOUSE BILL 606

Presentation and Opening Statement by Sponsor.

Representative Ed Grady of Canyon Creek, representing District 47, opened the hearing with a prepared opening statement (Exhibit 1). The purpose of the bill was to allow parents to provide non-intoxicating amounts of alcohol to their child. He said the bill had been drafted at the request of constituents of Rep. Dorothy Bradley of Bozeman, since Rep. Bradley's legislative workload had been too heavy.

List of Testifying Proponents and What Group they Represent:
There were none.

List of Testifying Opponents and What Group They Represent:
There were none.

Closing by Sponsor:

Rep. Darko closed saying she felt the penalties would help possession offenders to realize the seriousness of the offense. She said Senator Vaughn would carry the bill.

At this point in the hearing, Chairman Crippen returned to the meeting and assumed the chair.

HEARING ON HOUSE BILL 425

Presentation and Opening Statement by Sponsor:

Representative John Vincent of Bozeman, representing District #80, presented statistical charts calling attention to the problem of DUIs. He said that, on Friday and Saturday nights, the national average of drunk drivers is 1 in 10, but that in Montana, it is higher even up to 6 or 7 out of 10. For every 2000 drunk drivers on the road, he said, only one is ever arrested. The leading single cause of death for Montanans aged 15 to 40 is drunk driving. The percentage of drunken driving deaths has risen 10% since 1986. He thought deterrence, punishment and help were the ways to approach the problem. He said that drunken driving is the greatest cause of years of life lost in America. He commented that HB 425 had been improved with the amendments added in the House as it shifted toward treatment and rehabilitation, and not just license suspension. Secondly, it makes sure that anyone who commits a second offense gets the penalty for a second offense, he stated. Many citizens who have had the mandatory 1 day in jail go "per se" on the second offense and escape a mandatory day in jail. They have, he said, been getting a lesser penalty on the second offense. The third thing the bill does, he said, is to state that, for purposes of establishing previous convictions, the clock is running between the first conviction to the next offense, rather than from the first conviction to the second conviction. This, he said, is a technical point to help judges administer the law. The bill stiffens the penalties on the third offense, making the fine between \$500 and \$1000 mandatory, rather than discretionary, he added. Present law mandates a jail term, but not a fine. Many states have much stiffer penalties, he commented. He said that, as originally introduced, the bill struck the provision in present law that if a DUI has no additional offenses over a period of 5 years, the initial offense is stricken. This was amended out in the House, but he thought it should have been left in because it did not

give the judge a clear picture of the number of DUIs a person might have. He distributed an article about Montana law "being soft on repeat offenders" (Exhibit 7). He asked the committee to consider putting that amended language back in.

List of Testifying Proponents and What Group They Represent:

Mike Ruppert, executive director of the Boyd Andrew Chemical Dependency Care Center in Helena, Chemical Dependency Programs in Montana, County DUI Task Force
Bill Elliot, Highway Traffic Safety, Department of Justice
Mike DaSilva, Lewis and Clark DUI Task Force
Alice Armstrong, Lewis and Clark DUI Task Force and herself
Barbara Moy, Lewis and Clark DUI Task Force
Ruth Hodges,
Leonard Whartman, Jefferson County Task Force
Raelene Beaton, Lewis and Clark County Commission
Darryl Bruno, Department of Institutions
Wally Jewell, Montana Magistrates Association

List of Testifying Opponents and What Group They Represent:

There were none.

Testimony:

Mike Ruppert said the Boyd Andrew Center attempted to address people with and without drinking problems. He said there are misconceptions about the schooling they do. His center asks how many times an individual has broken the DUI law before getting caught. The average answer is 280 times, he said, and the maximum was 7,000 times. One woman had 6 DUIs in one year. She came to his center as a second offender because of the 5-year statute of limitations, and had never been to treatment. She still didn't think she had a drinking problem, he stated. People can benefit whether or not they go into treatment willingly, he added. He suggested amending the bill and presented the amendment to the committee (Exhibit 8). One assured certification of counsellors, under a point system. The second will provide the offender with a choice of which state-approved program and which treatment program they prefer to attend.

Bill Elliot said he is a training officer and files DUI data directly from DUI records. He called attention to Rep. Vincent's Exhibit (reverse side of Exhibit 7 - Analysis of Montana DUI Convictions for Years of 1985 through 1988) and, in particular the multiple offense figures. He said that in 1988, there were approximately 2,000 DUI offenders in Montana and, of that number, over 1/3 were subsequent offenders. Most of those get their drivers licenses back

with only proof of financial responsibility. He approved of the bill's requirement of treatment and requirement of punishment for a second offender and urged concurrence of the bill.

Mike DaSilva said many drunk drivers are on the road without getting picked up. He agreed with the bill's attempt to lessen the number of DUI "crashes" by reducing the number of people who drive drunk. He said the chance of getting picked up are slim for a problem drinker getting a DUI, and that the chances for getting picked up a second time are nearly zero. But, he stated, the bill will require treatment and he urged concurrence of the bill.

Alice Armstrong said she spoke as a nurse in noting that an alcoholic has a health problem. She said part of the problem is because alcohol is a socially accepted drug. When she worked as a school nurse, alcohol was considered to be one of the most damaging drugs. Unless treatment is forced, few alcoholics have any insight to their problem. Nearly everyone in society is affected by alcoholism, she said, through relatives or acquaintances. She said she had been hit by a DUI quadriplegic driver, with no insurance, who was convicted before and since and not jailed. She urged passage of the bill.

Barbara Moy (Exhibit 9) said sometime within the year, at least one member of the Senate would be impacted by a drunk driver. She said some first time offenders had blood alcohol levels of .30. Ten years ago she felt victimized when she was hit by a DUI offender. who did not even get a citation, she added.

Ruth Hodges said she felt that suspension and treatment would reduce offenses. She felt that driving should not be reinstated without completion of a course.

Leonard Whartman said he would like to make a comparison. He mentioned a case in which 5 children were gunned down on a school yard, causing a great outcry and demand to ban the type of weapon used. He told of a drunk driver hitting a school bus head-on, killing 27, yet there was no outcry against drunk drivers. Some legislators even say that every drunk driver is deserving of one mistake, he commented. If drivers know this law is on the books, he said, it might prevent the killing or injuring of innocent victims. We need laws now, he said, and he felt he knew because he himself was a recovering alcoholic.

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Clair Cantrell said her group encouraged Rep. Vincent to sponsor the bill and she urged its passage.

Raelene Beaton stood in support of the bill to eliminate repeat offenders. She thanked the legislators for funding DUI programs.

Darryl Bruno said the Department usually does not stand in support of this type of legislation. However, this time it did because it required treatment.

Wally Jewell supported the bill and presented written testimony to the committee (Exhibit 10).

Questions From Committee Members:

Senator Jenkins asked for clarifications on the House amendments to the bill. Rep. Vincent said he did not approve of the amendments on page 3, lines 3-6.

Senator Mazurek asked if Rep. Vincent would object to treating expungement in such a way that the records would be available but not public. Rep. Vincent said he would agree to that. He said if you run a red light or have a speeding ticket, those remain on your record. He thought it was inconsistent to remove DUI records.

Senator Beck asked Mr. Wharton if he was forced to go in for treatment and the answer was yes, that he felt he was being persecuted. He felt being confronted with what he was and forcing him to look at the consequences changed him.

Rep. Halligan asked Wally Jewell to comment on expungement. and was told that DUIs should remain on the record. Insurance companies need to know as well as judges, he said.

Closing by Sponsor:

Rep. Vincent closed showing a bumper sticker which read: Drunk drivers bring families together -- at the funeral. He also told some of the penalties of other states for first offenses. In Nebraska, the penalty is a mandatory 7 days, in jail, in Alaska - 3 days, in Colorado - 5 days, in California - 4 days and Oklahoma - 10 days. He thought it was good to compare because of those who think this bill is too strong. He also stressed the rehabilitative side of the bill. He urged concurrence.

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 3-16-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN			✓
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT			✓
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

2A

BONNIE

Montana DUI: Law too soft on repeat offenders, officials say

By **DAN BLACK**
The Daily Inter Lake

KALISPELL — Judy Hart can't tell you how many days Randy Turner has spent in jail for drunken-driving, but she'll tell you it hasn't been enough.

She can't give an exact total of the medical bills she has acquired since Turner nearly killed her daughter, Shari, in a grinding collision April 6, 1984, but she figures it's well over \$100,000. And while that is more than enough, the tab is still growing.

Turner, 32, of Coram, was convicted Friday in justice court of driving under the influence. While his driving record says the conviction is his fourth since the 1984 crash, it doesn't reflect DUI offenses more than five years old. If it did, Friday's DUI conviction would be Turner's ninth, dating back to 1975.

Because of state law, a month from now the DUI that critically injured Shari Hart will no longer appear on Turner's driving record.

Turner was sentenced to a year in jail for the DUI and six months for driving while his license was revoked — the maximum in both cases. But court officials said they share Judy

Hart's frustration with Montana law, which has gotten tougher on first-time offenders but does little to slow the number of repeat offenders like Turner.

"He's a menace," said County Attorney Ted Lypus in arguing for the maximum sentence. "Perhaps we can keep him from killing someone for a period of time."

Lympus said he wanted to recommend Turner spend time in state prison.

"Unfortunately, the Legislature has not seen fit to provide that opportunity," he said.

Justice of the Peace Stu Stadler assessed the maximum penalty — 18 months in Flathead County Jail.

Turner was intoxicated when his pickup truck strayed across the center line on U.S. 2 east of Columbia Falls and slammed into the left front corner of Shari Hart's car.

Her injuries included two broken legs, a crushed pelvic area, a shattered knee, a broken wrist, broken teeth and facial lacerations from broken glass.

She still suffers double vision, and memory loss, and walking is painful. She faces more operations on her knees and hand, and more treatment for arthritis and neurological disorders.

When Turner was arrested, his record

showed the DUI was only his second.

The penalty for a second DUI offense is up to six months in jail. A third offense carries a penalty of up to one year in jail, as do subsequent offenses.

In handing down Turner's sentence, the late Judge James Salansky told Turner he'd have made it longer if the law had allowed.

"Possibly 10 years in prison wouldn't be enough to teach you that your life has got to have some real changes in it," Salansky said.

Before he was sentenced for the 1984 DUI that almost killed Shari Hart, Turner told Judge Salansky, "I feel very bad for what happened. It has compelled me to get help for my alcoholism, and I fully intend to be sincere this time."

He promised the court he would not drive, possess or drink alcohol or socialize with people who did, and would get counseling.

However, a pre-sentence evaluation of Turner found he showed "little if any remorse for the injuries suffered by Miss Hart, and that a situation like this could occur again if drastic measures are not taken."

Turner served his year in jail and was released July 10, 1985.

Four months later, he was back in jail on another DUI charge.

SENIATE JUDICIAL

EXHIBIT NO. 7

DATE 3-16-89

PILL NO. HB 423

ANALYSIS OF MONTANA DUI CONVICTIONS
FOR YEARS OF 1985, 1986, 1987, 1988

	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>
MONTANA CONVICTIONS	8102	7406	6931	6714
OUT-OF-STATE CONVICTIONS	292	232	360	243
TOTAL CONVICTIONS	8394	7638	7291	6957
	<u>PER</u> <u>CENT</u>	<u>PER</u> <u>CENT</u>	<u>PER</u> <u>CENT</u>	<u>PER</u> <u>CENT</u>
TYPE OF OFFENSE				
DUI	66.7	63.8	57.7	55.5
DUI PER SE	10.1	10.6	14.5	14.5
TOTAL FIRST OFFENSES	76.8	74.4	72.2	70.0
TOTAL SECOND OFFENSES	19.4	20.6	20.3	22.0
TOTAL THIRD OR MORE OFFENSES	3.8	5.0	7.5	8.0
TOTAL MULTIPLE OFFENSES	23.2	25.6	27.8	30.0
	1879	1895	1926	2014
JUVENILE OFFENSES	1.8	1.6	1.1	2.9
ARREST BY AGENCY (In State)				
City Police	46.3	49.6	45.6	50.4
Sheriff	22.3	23.6	26.7	21.0
Highway Patrol	25.9	22.4	24.0	23.7
BIA	3.1	3.0	3.3	3.7
Others and Unknown	2.3	1.4	.4	1.0
OUT-OF-STATE CONVICTIONS	3.4	3.0	4.9	3.4
INAPPROPRIATE ACTION BY COURTS				
Late Tickets		.5	.5	.3
Sentences Contrary to Law		2.9	2.9	1.9
TOTAL	5.6	3.4	3.4	3.2
CONVICTIONS BY SEX				
Male	84.7	84.6	82.9	82.0
Female	15.3	15.4	17.1	18.0
MULTIPLE OFFENSES BY SEX				
Male		90.2	87.4	86.4
Female		9.8	12.6	13.6
MISCELLANEOUS				
BAC Refused			12.7	12.8
Average BAC			.18	.18

Ex 8 Ruppert

EXHIBIT NO. 8
DATE 3-16-89
BILL NO. HB 425

Amendments to House Bill No. 425
Third Reading Copy

Requested by Representative Vincent
For the Committee on the Judiciary

Prepared by John MacMaster
March 15, 1989

1. Page 5, Line 10:

Strike: "PROGRAM"
Insert: "certified chemical dependency"

2. Page 5, Line 24:

Following: "failure."
Insert: "As long as the alcohol information course or treatment program is approved as provided in this subsection the defendant may attend the information course or treatment program of his choice. The treatment provided defendant at a treatment program must be at a level appropriate to his alcohol problem, as determined by the ~~certified chemical dependency counselor.~~"

change to
Judge...

(13.6)

based upon the recommendation
by the certified chemical
dependency counselor.

Bark May



EXHIBIT NO. 7
DATE 3-16-89
BILL NO. City-County Building #4
P.O. Box 1723
Helena, Montana 59624
Telephone 406/443-1010

LEWIS AND CLARK COUNTY

STOP-D.U.I. Task Force

Health Department

Helena/Lewis and Clark County STOP-DUI Task Force supports HB 393, HB 425, HB 495, HB 506, and HB 606 for the following reasons:

Drinking is a factor in 80%-90% of traffic fatalities.

A large percentage of individuals arrested for DUI are diagnosed as either alcoholic or problem drinkers.

The BAC of a person arrested for DUI is generally .10% or more, with BAC'S of .18% to .2% being average. To reach a BAC of .10% or more, an abnormal use of alcohol is required.

Because many DUI offenders are either alcoholic or problem drinkers, they need appropriate strategies that compel them to abstain from drinking altogether.

Teenagers are more prone to becoming alcoholic/chemically dependent than adults because their bodies simply are not developed physiologically, psychologically, or emotionally. The younger youth are when they begin to drink, the greater their risk of developing the disease of alcoholism. Currently, alcohol-related motor vehicle crashes constitute the leading cause of death for youth of driving age.

Drug and alcohol counselors in the Helena area are seeing youth who have 4, 5, and 6 M.V. charges!

A recent drug and alcohol survey administered to Helena School District # 1 students (grades 7 thru 12) reveals this information:

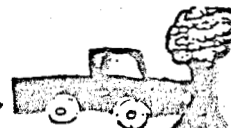
32.8% of students in 11th & 12th grades are "at risk" from alcohol use.

60% of students in 11th and 12th grades have reported drinking while driving.

20% of students in grades 7 thru 12 have reported their school work is affected by alcohol or chemical use.

According to H. Laurence Ross, a speaker at a Highway Safety Conference, 1984, "Drunken driving is normal in this society. It is a natural product of our social institutions, in particular our patterns of drinking and recreational activities and our patterns of transportation." Our society will continue to experience the repercussions of alcohol-related incidents and fatalities until the vast majority of people decide that drinking and driving is unacceptable and will not be tolerated. Therefore, the Helena/Lewis and Clark County STOP-DUI Task Force supports the above mentioned House Bills as they will provide for stricter enforcement and handling of persons who unlawfully use intoxicating substances.

It's because we care.



Mike Murren
Age 16
Gardner School

52

JUDICIARY
EXHIBIT NO. 10
DATE 3-16-89
BILL NO. HB 425

Montana Magistrates Association

16 March 1989

Testimony offered to the Senate Judiciary Committee in support of HB425, a bill for an act entitled: "An act to modify the driving under the influence statutes."

Given by Wallace A. Jewell on behalf of the Montana Magistrates Association representing the judges of courts of limited jurisdiction of Montana.

The Montana Magistrates Association supports this legislation as it attempts through driver's license suspension/revocation to increase the length of time the limited jurisdiction courts would have jurisdiction.

In March of 1988 I was fortunate enough to attend the National Judicial College at the University of Nevada Reno. It was there that I learned that any action by a court represents the most forceful and probably the first formal action by society against abusive or dependent behavior. Some 80% of our prison populations have drinking problems. Courts in general have yet to be persuaded to intervene at the source of such criminal conduct, preferring to use only traditional criminal sanctions, ie, jail, fine, etc. Judges see more substance dependent people than all the treatment personnel in the country yet many lack expertise in identifying or responding to it.

This is why it is so important that limited jurisdiction judges be able to rely upon the expertise of chemical dependency experts when a sentence is imposed.

Contrary to popular belief, "social drinkers" for the most part are not arrested for DUI. It is now estimated that in most states the probability of DUI arrest is 1 in 280 trips. The chance of no DUI arrest is 97%. Only when you drive DUI about twice a week do you have at least a 50% chance of an arrest.

Of 1208 DUI convictions in Allen County, Indiana, in 1985, 90% were diagnosed as problem drinkers or alcoholics with an average BAC of 0.19%. A 1983 study in Pennsylvania, obtained similar results. Of 21,000 offenders, 75% were either alcoholic or problem drinkers with an average BAC of 0.19%.

In Montana it appears that the "social drinker" is being addressed by current statute but little progress is being made with regard to the multiple offender. In 1985 the multiple offender comprised 23.2% of the total number of Montana DUI convictions, 1879 of 8102. Ever since then that figure has been on the rise; to 25.6%, 1895 of 7406, in

-2-

1986; to 27.8%, 1926 of 6931, in 1987; to 30%, 2014 of 6714, in 1988.

The problem of the multiple offender was testified to on 16 February of this year before the House Judiciary Committee by Billings City Judge Don Bjertness. Judge Bjertness testified that near the end of January he had before him in court a man charged with 3d offense DUI, at least that is what the man's records indicated. But Judge Bjertness knew otherwise because he had seen him many times before in Billings City Court; SIXTEEN times for DUI in the past 25 years. After the hearing Judge Bjertness indicated to me that the man's wife had been convicted of DUI TWELVE times.

In the Helena INDEPENDENT RECORD of 12 March the case of Randy Turner was reported, he has only had NINE DUI's and in 1984 told the judge "I fully intend to be sincere this time." Four months after his release from jail he was back with another DUI charge.

If stronger treatment measures were incorporated into current statute and the limited jurisdiction courts were given more time to effect a behavior change, we think the number of multiple offenders would decrease.

I encourage you to support this legislation and to give it a do concur recommendation from this committee.

Wallace A. Jewell

**Exhibits 11 – 14 are not for
HB 425.**

COUNTY COMMISSIONERS
DON PETERSON
District One
RAY HARBIN
District Two
GERALD L. NEWGARD
District Three

TREASURER
PATRICIA J. COOK

CLERK AND RECORDER
SURVEYOR
LORIN JACOBSON

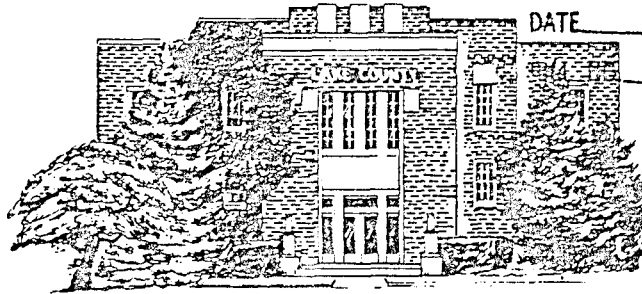


EXHIBIT NO. 15
DATE 3-16-89
HB 425
ASSESSOR
LENORE A. ROAT
SHERIFF AND CORONER
JOE GELDRICH
CLERK OF COURT
KATHERINE E. PEDERSEN
SUPERINTENDENT OF SCHOOLS
GLENNADENE FERRELL
COUNTY ATTORNEY
LARRY J. NISTLER
JUSTICE OF THE PEACE
CHUCK WHITSON

LAKE COUNTY

PHONE 406/883-6211 • 106 FOURTH AVENUE EAST • POLSON, MONTANA 59860

March 15, 1989

Senate Judiciary Committee
Bruce D. Crippen, Chairman
Room 325
Capitol Station
Helena, MT 59620

Dear Members:

The Lake County DUI Task Force respectfully requests your support of House Bills 425, 334, 393, 495, and 582 for the following reasons:

According to the Montana Board of Crime Control, Repeat DUIs have increased 49% from 1984 to 1987. Repeat offenders with a 3rd or more offense increased 92% from 1985-1987. In 1987 there were 234 fatalities, 59% were alcohol related. Due to the fact that alcohol related fatalities remain the leading cause of death for youth of driving age, it is imperative that our laws amplify that drinking and driving will not be tolerated. The 1988 State of Montana Board of Crime Control, Juvenile Referral Summary Report states that Lake County reported a total of 94 cases where the primary referral was Children in possession of intoxicating substances. Tribal Youth Court reported 96 liquor violations. The State-wide number in both referral categories was 1,484. This indicates that a very high percent of youth court referrals are alcohol related.

In 1987, Lake County reported a total of 395 DUI convictions or 23.1 per 1000. It is obvious that immediate action must be taken to increase the awareness that Drinking and Driving is causing unnecessary deaths, that it is not acceptable behavior and without appropriate treatment we will continue to see multiple offenders and an increase in alcohol related traffic fatalities.

Sincerely,

Ruth Hodges
Director

Lake County DUI Task Force

VISITORS' REGISTER

SENATE JUDICIARY COMMITTEE

BILL NO. DATE 16 MARCH '89.SPONSOR

L#

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NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Wally Jewell	MT MAG ASSOC	X	
Judy Griffith	Helena Project CARE	X	
Wally Jewell	MT SELF	X	
Rayleen Beaton	Helena-City Commissioner	X	
Lois K. McMeekin ^{HB 3425, 393, 495, 582}	Helena-Stop DUI Task Force		
Dale F McMeekin	Helena Stop DUI & AHRP		
Brian E. Smith	MTS Justice	X	
Mike Pugh	Boyd Andrew CDC	X	
Leonard Whitman	Jefferson Co. DUI Task Force	X	
MIKE DASILVA	HELENA LSC & DUI Task Force	X	
Sue Kneigut	Chem Abus Program & Montana	X	
Barb May	LACRAM CO. STOP DUI COORD.	X	
Clair Cantrell	Bozeman, MT	X	
Mike Cronin	Helena STOP DUI Task Force AAA	X	
Ben Howard	MT Motor Carriers Assoc	X	
Shelly Laine	City of Helena	X	
Carol Davis	Dept of Education	X	
Alice Armstrong	L-C - DUI Task Force	X	
Wally Jewell	MT MAG ASSOC	X	
Wally Jewell	" " "	X	

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393

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY. X

D.P. GALT

JEFF CO. DUI TASK FORCE

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce Crippen, on March 20,
1989, at 10:00 a.m. in Room 325.

ROLL CALL

Members Present: Chairman Bruce Crippen, V. Chairman Al
Bishop, Senators Tom Beck, Bob Brown, Mike Halligan,
Loren Jenkins, Joe Mazurek, R. J. Pinsoneault and Bill
Yellowtail.

Members Excused: Senator John Harp

Members Absent: None

Staff Present: Staff Attorney Valencia Lane and Committee
Secretary Rosemary Jacoby

Announcements/Discussion: None

HEARING ON HOUSE BILL 534

Presentation and Opening Statement by Sponsor:

Representative Chuck Swysgood of Dillon, House District
73, opened the hearing. He said the bill was an
amendment to the interstate compact on juveniles. The
reason the bill was requested was that, during
proceedings on juveniles, a juvenile cannot be
extradited who had not been adjudicated and "skips"
between the time of adjudication and the time of
hearing. This causes problems for county attorneys
because, if they wanted to have the youth brought back,
they had to have him declared an adult and go through
the procedures of adult extradition laws. Then, the
youth had to be tried under adult laws, according to
Rep. Swysgood. Thirty-eight other states have enacted
this law which extradites youths in an easier way and
allows them to be tried as youths once they're back in
the state.

would provide that homicide prosecution may be started at any time.

List of Testifying Proponents and What Group they Represent:

John Connor Montana County Attorneys Association.

List of Testifying Opponents and What Group They Represent:

None

Testimony:

John Connor said this bill fell into the category of a housekeeping bill. He urged support.

Questions From Committee Members: None

Closing by Sponsor: Rep. Daily closed the hearing.

DISPOSITION OF HOUSE BILL 504

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Brown MOVED that House Bill 504 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

DISCUSSION OF HOUSE BILL 495

Discussion: Chairman Crippen said that, though House Bill 495 had been passed out of committee, several people had shown concern with the bill.

Senator Mazurek said it had been called to his attention that, because the bill could include youths 18 years old, it would include many high school seniors. Senator Crippen said that Representative Strizich had commented that if it included 18-year-old youths, it would not be passed in the House. No motion was made to reconsider the bill.

DISPOSITION OF HOUSE BILL 425

Discussion: Valencia Lane explained the amendments: #1 amended the title, #2 requested by Boyd Andrews Center

regarding certified counsellors, #4 to conform to the bill passed out of committee regarding expungement of records. (Exhibit 3)

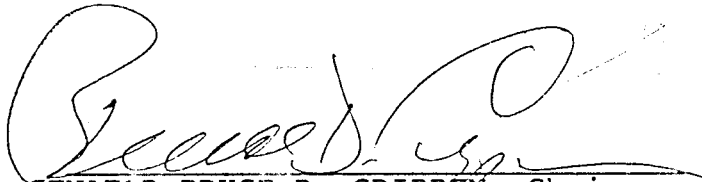
Amendments and Votes: Senator Mazurek MOVED that Amendments 1 and 4 be adopted by the committee. The MOTION CARRIED UNANIMOUSLY.

Senator Halligan MOVED that Amendments 2 and 3 be adopted. The MOTION CARRIED by a vote of 8 to 1 with Senator Beck voting NO.

Recommendations and Votes: Senator Halligan MOVED that House Bill 425 BE CONCURRED IN AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment At: 11:45 a.m.



SENATOR BRUCE D. CRIPPEN, Chairman

BDC/rj
minrj.320

Amendments to House Bill No. 425
Third Reading Copy (BLUE)

For the Committee on Judiciary

Prepared by Valencia Lane
March 16, 1989

1. Title, lines 17 and 18.

Following: "CONVICTION;" on line 17

Strike: remainder of line 17 through "EXPUNGED" on line 18

Insert: "PROVIDING THAT DUI PRIOR CONVICTION RECORDS MAY NOT BE
EXPUNGED; RESTRICTING ACCESS TO THE RECORDS"

2. Page 5, line 10.

Strike: "PROGRAM"

Insert: "certified chemical dependency"

3. Page 5, line 24.

Following: "failure."

Insert: "As long as the alcohol information course and treatment
program are approved as provided in this subsection, the
defendant may attend the information course and treatment
program of his choice. The treatment provided defendant at
a treatment program must be at a level appropriate to his
alcohol problem, as determined by the judge based upon the
recommendation from the certified chemical dependency
counselor."

4. Page 6, lines 16 and 17.

Following: "THEN" on line 16

Strike: remainder of line 16 through "RECORD" on line 17

Insert: "all records and data relating to the prior conviction
are confidential criminal justice information as defined in
44-5-103 and public access to the information may only be
obtained by district court order upon good cause shown"

ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 3-20-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP			✓
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

March 20, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 425 (third reading copy -- blue), respectfully report that HB 425 be amended and as so amended be concurred in:

Sponsor: Vincent ()

1. Title, lines 17 and 18.

Following: "CONVICTION;" on line 17

Strike: remainder of line 17 through "EXPUNGED" on line 18

Insert: "PROVIDING THAT DUI PRIOR CONVICTION RECORDS MAY NOT BE
EXPUNGED; RESTRICTING ACCESS TO THE RECORDS"

2. Page 5, line 10.

Strike: "PROGRAM"

Insert: "certified chemical dependency"

3. Page 5, line 24.

Following: "failure."

Insert: "As long as the alcohol information course and treatment program are approved as provided in this subsection, the defendant may attend the information course and treatment program of his choice. The treatment provided to the defendant at a treatment program must be at a level appropriate to his alcohol problem, as determined by the judge based upon the recommendation from the certified chemical dependency counselor."

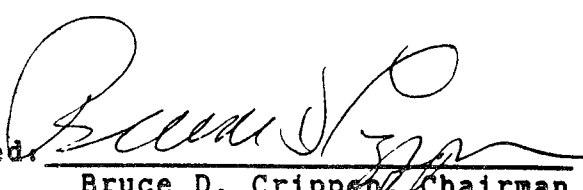
4. Page 6, lines 16 and 17.

Following: "THEN" on line 16

Strike: remainder of line 16 through "RECORD" on line 17

Insert: "all records and data relating to the prior conviction are confidential criminal justice information as defined in 44-5-103 and public access to the information may only be obtained by district court order upon good cause shown"

AND AS AMENDED BE CONCURRED IN

Signed, 

Bruce D. Crippen, Chairman

HB 425

SENATE

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HOUSE BILL NO. 425

INTRODUCED BY VINCENT, BROOKE, CLARK, SPAETH

A BILL FOR AN ACT ENTITLED: "AN ACT TO MODIFY THE DRIVING UNDER THE INFLUENCE ~~AND PER SE PENALTY~~ STATUTES ~~REBATING TO~~ ~~ALCOHOL OR DRUG RELATED DRIVING OFFENSES~~; TO KEEP A DRIVER'S LICENSE SUSPENSION FOR A SECOND OR SUBSEQUENT OFFENSE IN EFFECT UNTIL TREATMENT AN ALCOHOL INFORMATION COURSE AND TREATMENT, IF TREATMENT IS ALSO ORDERED, IS COMPLETED; TO PROVIDE THAT, FOR THE PURPOSE OF CALCULATING THE NUMBER OF CONVICTIONS FOR PURPOSES OF THE DUI PENALTY SECTION, A CONVICTION UNDER ~~ONE OF A PER SE OFFENSE~~ CONSTITUTES A CONVICTION UNDER THE ~~OTHER AND TO PROVIDE THAT, EXCEPT FOR THE FIRST OFFENSE, THE PENALTIES IN THE TWO STATUTES ARE THE SAME~~ DUI OFFENSE SECTION; TO CLARIFY WHEN AN A DUI OFFENDER IS CONSIDERED TO HAVE A PREVIOUS CONVICTION; ~~TO DELETE A REQUIREMENT THAT DUI RECORDS BE~~ EXPUNGED PROVIDING THAT DUI PRIOR CONVICTION RECORDS MAY NOT BE EXPUNGED; RESTRICTING ACCESS TO THE RECORDS; AND AMENDING SECTIONS 61-5-208, AND 61-8-714, ~~AND 61-8-722~~, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 61-5-208, MCA, is amended to read:

"61-5-208. Period of suspension or revocation. (1) The department may not suspend or revoke a driver's license,

commercial vehicle operator's endorsement, or privilege to drive a motor vehicle on the public highways for a period of more than 1 year, except as permitted under subsection (2) of this section, 61-5-207, 61-5-212, 61-6-123, and 61-11-211.

(2) Any person whose license, commercial vehicle operator's endorsement, or privilege to drive a motor vehicle on the public highways has been suspended or revoked is not entitled to have ~~such the~~ license, endorsement, or privilege renewed or restored unless the revocation was for a cause which has been removed, except that after the expiration of the period of ~~such the~~ revocation or suspension, the person may make application for a new license or endorsement as provided by law but the department may not then issue a new license or endorsement unless and until it is satisfied, after investigation of the driving ability of the person and upon a showing by its records or other sufficient evidence, that the person is eligible to be licensed to drive in this state. When any person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination thereof or for the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall, upon

receiving a report of such conviction or forfeiture of bail or collateral not vacated, suspend the license, including any commercial vehicle operator's endorsement, or driving privilege of the person for a period of 6 months, ~~except that if the person is required to complete a treatment course or program, the suspension remains in effect until the course or program is completed.~~ Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall revoke the license, ~~including any commercial vehicle operator's endorsement, or driving privilege of the person for a period of 1 year, except that if the person is required to complete a treatment course or program, the revocation remains in effect until the course or program is completed~~ 1-YEAR PERIOD PASSES AND THE PERSON HAS NOT COMPLETED AN ALCOHOL INFORMATION COURSE, TREATMENT, OR BOTH, AS ORDERED BY THE SENTENCING COURT, THE LICENSE REVOCATION REMAINS IN EFFECT UNTIL THE COURSE, TREATMENT, OR BOTH ARE COMPLETED.

(3) The period for all revocations made mandatory by 61-5-205 shall be 1 year except as provided in subsection (2) of this section.

(4) The period of revocation for any person convicted of any offense which makes mandatory the revocation of the driver's license commences from date of conviction or

forfeiture of bail."

Section 2. Section 61-8-714, MCA, is amended to read:

"61-8-714. Penalty for driving under the influence of alcohol or drugs. (1) A person convicted of a violation of 61-8-401 shall be punished by imprisonment in the county jail for not less than 24 consecutive hours or more than 60 days, and shall be punished by a fine of not less than \$100 or more than \$500. The jail sentence may not be suspended unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being.

(2) On a second conviction, he shall be punished by a fine of not less than \$300 or more than \$500 and by imprisonment for not less than 7 days, at least 48 hours of which must be served consecutively, or more than 6 months. Three days of the jail sentence may not be suspended unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being.

(3) On the third or subsequent conviction, he shall be punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served consecutively, or more than 1 year, ~~to which may be added, in the discretion of the court,~~ and by a fine of not less than \$500 or more than \$1,000. Notwithstanding any provision

1 to the contrary providing for suspension of execution of a
2 sentence imposed under this subsection, the imposition or
3 execution of the first 10 days of the jail sentence imposed
4 for a third or subsequent offense that occurred within 5
5 years of the first offense may not be deferred or suspended.

6 (4) In addition to the punishment provided in this
7 section, regardless of disposition, the defendant shall
8 complete an alcohol information course at an alcohol
9 treatment program approved by the department of
10 institutions, which may, IN THE SENTENCING COURT'S
11 DISCRETION AND UPON RECOMMENDATION OF A PROGRAM CERTIFIED
12 CHEMICAL DEPENDENCY COUNSELOR, include alcohol or drug
13 treatment, or both, ~~if considered necessary by the counselor~~
14 ~~conducting the program.~~ ON CONVICTION OF A SECOND OR
15 SUBSEQUENT OFFENSE UNDER THIS SECTION, IN ADDITION TO THE
16 PUNISHMENT PROVIDED IN THIS SECTION, REGARDLESS OF
17 DISPOSITION, THE DEFENDANT SHALL COMPLETE AN ALCOHOL
18 INFORMATION COURSE AT AN ALCOHOL TREATMENT PROGRAM APPROVED
19 BY THE DEPARTMENT OF INSTITUTIONS, WHICH MUST INCLUDE
20 ALCOHOL OR DRUG TREATMENT OR BOTH. Each counselor providing
21 such education or treatment shall, at the commencement of
22 the education or treatment, notify the court that the
23 defendant has been enrolled in a course or treatment
24 program. If the defendant fails to attend the course or the
25 treatment program, the counselor shall notify the court of

1 the failure. AS LONG AS THE ALCOHOL INFORMATION COURSE AND
2 TREATMENT PROGRAM ARE APPROVED AS PROVIDED IN THIS
3 SUBSECTION, THE DEFENDANT MAY ATTEND THE INFORMATION COURSE
4 AND TREATMENT PROGRAM OF HIS CHOICE. THE TREATMENT PROVIDED
5 TO THE DEFENDANT AT A TREATMENT PROGRAM MUST BE AT A LEVEL
6 APPROPRIATE TO HIS ALCOHOL PROBLEM, AS DETERMINED BY THE
7 JUDGE BASED UPON THE RECOMMENDATION FROM THE CERTIFIED
8 CHEMICAL DEPENDENCY COUNSELOR.

9 (5) For the purpose of determining the number of
10 convictions under this section, "conviction" means a final
11 conviction, as defined in 45-2-101, in this state, or
12 conviction for a violation of a similar statute in another
13 state, or a forfeiture of bail or collateral deposited to
14 secure the defendant's appearance in court in this state or
15 another state, which forfeiture has not been vacated. An
16 offender is considered to have been previously convicted for
17 the purposes of this section if less than 5 years have
18 elapsed between the commission of the present offense and a
19 previous conviction. if there has been no additional
20 conviction for an offense under this section for a period of
21 5 years after a prior conviction hereunder, then such prior
22 offense shall be expunged from the defendant's record. IF
23 THERE HAS BEEN NO ADDITIONAL CONVICTION FOR AN OFFENSE UNDER
24 THIS SECTION FOR A PERIOD OF 5 YEARS AFTER A PRIOR
25 CONVICTION HEREUNDER, THEN SUCH PRIOR OFFENSE SHALL BE

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~~EXPUNGED FROM THE DEFENDANT'S RECORD~~ ALL RECORDS AND DATA
RELATING TO THE PRIOR CONVICTION ARE CONFIDENTIAL CRIMINAL
JUSTICE INFORMATION AS DEFINED IN 44-5-103 AND PUBLIC ACCESS
TO THE INFORMATION MAY ONLY BE OBTAINED BY DISTRICT COURT
ORDER UPON GOOD CAUSE SHOWN.

(6) For the purpose of calculating subsequent
convictions under this section, a conviction for a violation
of 61-8-406 also constitutes a conviction for a violation of
61-8-401."

Section 3. ~~Section 61-8-722, MCA, is amended to read:~~

"61-8-722. ~~Penalty for driving with excessive blood
alcohol concentration.~~ (1) ~~A person convicted of a
violation of 61-8-406 shall be punished by imprisonment for
not more than 10 days and shall be punished by a fine of not
less than \$100 or more than \$500.~~

(2) ~~On a second conviction of a violation of 61-8-406,
he shall be punished by a fine of not less than \$300 or more
than \$500 and by imprisonment for not less than 7 days, at
least 48 consecutive hours of which must be served
consecutively, or more than 30 days and by a fine of not
less than \$300 or more than \$500 6 months. Three days of the
jail sentence may not be suspended unless the judge finds
that the imposition of the jail sentence will pose a risk to
the defendant's physical or mental well-being.~~

(3) ~~On a third or subsequent conviction of a violation~~

~~of 61-8-406, he shall be punished by imprisonment for a term
of not less than 30 days, at least 48 consecutive hours or
more than 6 months of which must be served consecutively, or
more than 1 year, and by a fine of not less than \$500 or
more than \$1,000. Notwithstanding any provision to the
contrary providing for suspension of execution of a sentence
imposed under this subsection, the imposition or execution
of the first 10 days of the jail sentence imposed for a
third or subsequent offense that occurred within 5 years of
the first offense may not be deferred or suspended.~~

(4) ~~The provisions of 61-5-205(2), 61-5-208(2), and
61-11-203(2)(d) relating to revocation and suspension of
driver's licenses shall apply to any conviction under
61-8-406.~~

(5) ~~In addition to the punishment provided in this
section, regardless of disposition, the defendant shall
complete an alcohol information course at an alcohol
treatment program approved by the department of
institutions, which may include alcohol or drug treatment,
or both, if considered necessary by the counselor conducting
the program. Each counselor providing such education or
treatment shall, at the commencement of the education or
treatment, notify the court that the defendant has been
enrolled in a course or treatment program. If the defendant
fails to attend the course or the treatment program, the~~

counselor shall notify the court of the failure:

{6}--For the purpose of determining the number of convictions under this section, "conviction" means a final conviction as defined in 45-2-101, in this state, or conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of this section if less than 5 years have elapsed between the commission of the present offense and a previous conviction, if there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction hereunder, then such prior offense shall be expunged from the defendant's record.

{7}--For the purpose of calculating subsequent convictions under this section, a conviction for a violation of 61-8-401 also constitutes a conviction of 61-8-406."

NEW SECTION. Section 3. Extension of authority. Any existing authority to make rules on the subject of the provisions of {this act} is extended to the provisions of {this act}.

-End-

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